

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ALISON J. SCONAWAH,

Plaintiff,

vs.

CAROLYN W. COLVIN,

Acting Commissioner of Social Security,

Defendant.

No. 1:15-CV-03120-MKD

**ORDER DENYING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AND GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

ECF Nos. 14, 15

BEFORE THE COURT are the parties' cross-motions for summary judgment. ECF Nos. 14, 15. The parties consented to proceed before a magistrate judge. ECF No. 6. The Court, having reviewed the administrative record and the parties' briefing, is fully informed. For the reasons discussed below, the Court denies Plaintiff's motion (ECF No. 14) and grants Defendant's motion (ECF No. 15).

JURISDICTION

The Court has jurisdiction over this case pursuant to 42 U.S.C. §§ 405(g); 1383(c)(3).

STANDARD OF REVIEW

A district court's review of a final decision of the Commissioner of Social Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is limited; the Commissioner's decision will be disturbed "only if it is not supported by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012). "Substantial evidence" means "relevant evidence that a reasonable mind might accept as adequate to support a conclusion." *Id.* at 1159 (quotation and citation omitted). Stated differently, substantial evidence equates to "more than a mere scintilla[,] but less than a preponderance." *Id.* (quotation and citation omitted). In determining whether the standard has been satisfied, a reviewing court must consider the entire record as a whole rather than searching for supporting evidence in isolation. *Id.*

In reviewing a denial of benefits, a district court may not substitute its judgment for that of the Commissioner. If the evidence in the record "is susceptible to more than one rational interpretation, [the court] must uphold the ALJ's findings if they are supported by inferences reasonably drawn from the record." *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). Further, a district court "may not reverse an ALJ's decision on account of an error that is harmless." *Id.* An error is harmless "where it is inconsequential to the [ALJ's] ultimate nondisability determination." *Id.* at 1115 (quotation and citation omitted). The

1 party appealing the ALJ's decision generally bears the burden of establishing that
2 it was harmed. *Shineski v. Sanders*, 556 U.S. 396, 409-10 (2009).

3 **FIVE-STEP EVALUATION PROCESS**

4 A claimant must satisfy two conditions to be considered "disabled" within
5 the meaning of the Social Security Act. First, the claimant must be "unable to
6 engage in any substantial gainful activity by reason of any medically determinable
7 physical or mental impairment which can be expected to result in death or which
8 has lasted or can be expected to last for a continuous period of not less than twelve
9 months." 42 U.S.C. § 1382c(a)(3)(A). Second, the claimant's impairment must be
10 "of such severity that he is not only unable to do his previous work[,] but cannot,
11 considering his age, education, and work experience, engage in any other kind of
12 substantial gainful work which exists in the national economy." 42 U.S.C. §
13 1382c(a)(3)(B).

14 The Commissioner has established a five-step sequential analysis to
15 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §
16 416.920(a)(4)(i)-(v). At step one, the Commissioner considers the claimant's work
17 activity. 20 C.F.R. § 416.920(a)(4)(i). If the claimant is engaged in "substantial
18 gainful activity," the Commissioner must find that the claimant is not disabled. 20
19 C.F.R. § 416.920(b).

1 If the claimant is not engaged in substantial gainful activity, the analysis
2 proceeds to step two. At this step, the Commissioner considers the severity of the
3 claimant's impairment. 20 C.F.R. § 416.920(a)(4)(ii). If the claimant suffers from
4 "any impairment or combination of impairments which significantly limits [his or
5 her] physical or mental ability to do basic work activities," the analysis proceeds to
6 step three. 20 C.F.R. § 416.920(c). If the claimant's impairment does not satisfy
7 this severity threshold, however, the Commissioner must find that the claimant is
8 not disabled. 20 C.F.R. § 416.920(c).

9 At step three, the Commissioner compares the claimant's impairment to
10 severe impairments recognized by the Commissioner to be so severe as to preclude
11 a person from engaging in substantial gainful activity. 20 C.F.R. §
12 416.920(a)(4)(iii). If the impairment is as severe or more severe than one of the
13 enumerated impairments, the Commissioner must find the claimant disabled and
14 award benefits. 20 C.F.R. § 416.920(d).

15 If the severity of the claimant's impairment does not meet or exceed the
16 severity of the enumerated impairments, the Commissioner must pause to assess
17 the claimant's "residual functional capacity." Residual functional capacity (RFC),
18 defined generally as the claimant's ability to perform physical and mental work
19 activities on a sustained basis despite his or her limitations, 20 C.F.R. §
20 416.945(a)(1), is relevant to both the fourth and fifth steps of the analysis.

1 At step four, the Commissioner considers whether, in view of the claimant's
2 RFC, the claimant is capable of performing work that he or she has performed in
3 the past (past relevant work). 20 C.F.R. § 416.920(a)(4)(iv). If the claimant is
4 capable of performing past relevant work, the Commissioner must find that the
5 claimant is not disabled. 20 C.F.R. § 416.920(f). If the claimant is incapable of
6 performing such work, the analysis proceeds to step five.

7 At step five, the Commissioner considers whether, in view of the claimant's
8 RFC, the claimant is capable of performing other work in the national economy.
9 20 C.F.R. § 416.920(a)(4)(v). In making this determination, the Commissioner
10 must also consider vocational factors such as the claimant's age, education and
11 past work experience. 20 C.F.R. § 416.920(a)(4)(v). If the claimant is capable of
12 adjusting to other work, the Commissioner must find that the claimant is not
13 disabled. 20 C.F.R. § 416.920(g)(1). If the claimant is not capable of adjusting to
14 other work, analysis concludes with a finding that the claimant is disabled and is
15 therefore entitled to benefits. 20 C.F.R. § 416.920(g)(1).

16 The claimant bears the burden of proof at steps one through four above.
17 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to
18 step five, the burden shifts to the Commissioner to establish that (1) the claimant is
19 capable of performing other work; and (2) such work "exists in significant
20

1 numbers in the national economy.” 20 C.F.R. § 416.920(c)(2); *Beltran v. Astrue*,
2 700 F.3d 386, 389 (9th Cir. 2012).

3 ALJ’S FINDINGS

4 Plaintiff applied for Title XVI supplemental security income on March 1,
5 2012, alleging on onset of disability beginning September 4, 2006.¹ Tr. 176-81.
6 The application was denied initially, Tr. 117-20, and on reconsideration, Tr. 124-
7 25. Plaintiff appeared at a hearing before an administrative law judge (ALJ) on
8 October 29, 2013. Tr. 40-72. On November 7, 2013, the ALJ denied Plaintiff’s
9 claim. Tr. 18-32.

10 At step one of the sequential evaluation analysis, the ALJ found Plaintiff has
11 not engaged in substantial gainful activity since March 12, 2012, the application
12 date. Tr. 20. At step two, the ALJ found Plaintiff has the following severe
13 impairments: alcoholism; generalized arthritis/polyarthralgias (hands, elbows,

14 _____

15 ¹ The ALJ noted Plaintiff filed prior applications. In August 2001, Plaintiff filed a
16 Title XVI supplemental security income application; in September 2011, Plaintiff
17 filed a Title II disability insurance benefit application. Tr. 18. In October 2011,
18 both of these applications were initially denied, and, as the ALJ observed, Plaintiff
19 did not appeal these decisions; therefore, these decisions became the final decision
20 of the Commissioner. Tr. 18.

1 knees, shoulders and feet); bilateral foot problems; degenerative disc disease
2 cervical and lumbar spine with scoliosis/pain. Tr. 20. At step three, the ALJ found
3 Plaintiff does not have an impairment or combination of impairments that meets or
4 medically equals the severity of a listed impairment. Tr. 21. The ALJ then
5 concluded that Plaintiff has the RFC to perform light work, with the following
6 additional limitations:

7 [T]he claimant is able to lift up to 20 pounds occasionally, lift and carry up
8 to 10 pounds frequently in light work as defined by the regulations. She
9 must be allowed to sit or stand alternatively at 30 to 45 minute intervals for 3
10 to 5 minutes, during which period she may remain on task. She may
11 frequently balance, occasionally climb ramps and stairs, stoop, kneel, crouch
12 and crawl. She may never climb ladders, ropes and scaffolds. She may
13 frequently engage in handling and fingering activities with the bilateral
14 upper extremities, and may occasionally reach overhead with the same. She
15 may occasionally push, pull, and engage in foot pedal operations with the
16 bilateral lower extremities. She must avoid more than occasional exposure
17 to extreme cold, vibration, and hazards such as moving machinery and
18 unsecured heights. She is fully capable of learning, remembering and
19 performing simple and detailed work tasks which are performed in a low
20 stress work environment, defined as one in which there is a regular
production pace, few if any workplace changes, and no "over the shoulder"
supervision.

Tr. 22-23. At step four, the ALJ found Plaintiff has no past relevant work. Tr. 30.

At step five, the ALJ found that, considering Plaintiff's age, education, work
experience, RFC, and the testimony of a vocational expert, there are jobs in
significant numbers in the national economy that Plaintiff could perform, such as
electronics worker, motel/hotel housecleaner, and garment sorter. Tr. 31. On that

1 basis, the ALJ concluded that Plaintiff is not disabled as defined in the Social
2 Security Act. Tr. 31.

3 On May 22, 2015, the Appeals Council denied review of the ALJ's decision,
4 Tr. 1-4, making the ALJ's decision the Commissioner's final decision for purposes
5 of judicial review. *See* 42 U.S.C. § 1383(c)(3).

6 ISSUES

7 Plaintiff seeks judicial review of the Commissioner's final decision denying
8 her supplemental security income under Title XVI of the Social Security Act.

9 Plaintiff raises the following issues for review:

- 10 1. Whether the ALJ properly weighed the lay witness testimony;
- 11 2. Whether the ALJ properly discredited Plaintiff's symptom claims; and
- 12 3. Whether the ALJ properly determined Plaintiff's RFC.

13 ECF No. 14 at 1.

14 DISCUSSION

15 A. Lay Witness Testimony

16 Plaintiff faults the ALJ for failing to credit the lay witness testimony. ECF
17 No. 14 at 3-8. An ALJ need only provide germane reasons for rejecting lay
18 witness testimony. *Molina*, 674 F.3d at 1111.

19 Plaintiff contends the ALJ's erred because he "based his impressions of all
20 witness testimonies on the credibility of Plaintiff," creating legal error that Plaintiff

1 contends requires remand. ECF No. 14 at 4. Specifically, Plaintiff contends that
2 the ALJ erroneously relied on the lack of medical records supporting the opinions
3 of Mr. Souza and Ms. Southard because the “medical records are sparse due to
4 [Plaintiff’s] periods of homelessness and lack of transportation resources.” *Id.*,
5 citing Tr. 59, 287. The Court concludes that the ALJ provided germane reasons for
6 rejecting the testimony of the lay witnesses.

7 *1. Mr. Souza*

8 Anthony Souza, a friend of Plaintiff, completed a function report in April
9 2012. Tr. 206-13. The ALJ observed that Mr. Souza noted Plaintiff “has problems
10 cooking food; she has problems using her hands to open bottles,” and needs help
11 performing activities of daily living. Tr. 27 (citing Tr. 206-07). However, the ALJ
12 further noted that Souza stated that Plaintiff was able to shop for groceries, went on
13 occasional rock hunts, and walked a quarter of a mile before she needed to stop
14 and rest. Tr. 27 (citing Tr. 209-11). The ALJ gave several reasons for giving Mr.
15 Souza’s opinion little weight.

16 First, the ALJ found that Mr. Souza’s opinions were not supported by the
17 medical evidence, and were further contradicted by Plaintiff’s
18 “non/compliance/non-pursuit” of treatment. Tr. 27. Lay testimony is competent
19 evidence which the Secretary must take into account. *Stout v. Comm’r of Soc. Sec.*
20 *Admin.*, 454 F.3d 1050, 1053 (9th Cir. 2006); 20 C.F.R. §§ 404.1513(d)(4) & (e),

416.913(d)(4) & (e) (evidence from non-medical sources such as family members, friends, and neighbors, may be used to show the severity of an impairment and how it affects the claimant's ability to work). However, [a]n ALJ may discount lay testimony if it conflicts with medical evidence. *Lewis v. Apfel*, 236 F.3d 503, 511 (9th Cir. 2001) (citing *Vincent Heckler*, 739 F.2d 1393, 1395 (9th Cir. 1984)). For example, Mr. Souza's opinion that Plaintiff "cannot do physical activities," Tr. 211, was contradicted by medical evidence showing normal functioning. *See, e.g.*, Tr. 295 (At an examination in August 2011, F. Joseph Rinella, D.O., observed Plaintiff's disc disease, according to an MRI, was "clinically stable." At this exam, Dr. Rinella noted that Plaintiff bent over at the waist and touched her hands to the floor; she "then walked her hands out in front of her and did a push-up!"). In addition, Mr. Souza's statements that that Plaintiff had difficulty with hand functioning, was also inconsistent with medical evidence showing normal functioning. Tr. 311-12 (at a consultative examination in July 2012, Dr. Weis opined that Plaintiff had no major restriction in the ability to use her hands; she was able to do very fine motor tasks with her hands and had no fine motor limitations; in addition, Dr. Weis opined that Plaintiff could frequently handle, finger, and feel). Moreover, the ALJ reasonably concluded that a person with the degree of limitation Mr. Souza described would be expected to comply with prescribed medical treatment, but the record shows that Plaintiff failed to do so,

1 lending less credence to Mr. Souza's more dire assessed limitations. *See* Tr. 295
2 (Dr. Rinella noted in August 2011 that "Physical therapy would be beneficial but
3 the patient has not demonstrated a strong trend toward compliance."). The ALJ's
4 determination that Mr. Souza's opinion is contradicted by the medical evidence,
5 and by Plaintiff's failure to comply with or seek medical treatment is a reasonable
6 interpretation of the record.

7 Second, the ALJ rejected Mr. Souza's opinion as internally inconsistent. Tr.
8 27. An ALJ is permitted to reject inconsistent lay testimony. *Bayliss v. Barnhart*,
9 427 F.3d 1211, 1218 (9th Cir. 2005) (ALJ properly accepted the testimony of
10 Bayliss's family and friends that was consistent with the record of Bayliss's
11 activities and the objective evidence in the record; he rejected portions of their
12 testimony that did not meet this standard.). The ALJ found that Mr. Souza's
13 statement that Plaintiff was able to walk a quarter of a mile and occasionally go
14 rock hunting, Tr. 27 (citing 210-11), was inconsistent with his opinion that Plaintiff
15 is "*unable* to do physical activities," Tr. 211, and that Plaintiff "needs help daily
16 with walking and standing." Tr. 211 (emphasis added). Moreover, Mr. Souza
17 noted that Plaintiff has no problem with personal care, Tr. 207, which presumably
18 includes activities that involve gripping and handling objects, such as a toothbrush,
19 hairbrush, or a razor. The ability to handle such personal care is inconsistent with
20 his claims that Plaintiff has severe difficulty using her hands, such as to open cans,

1 open bottles, and peel or cut vegetables. Tr. 206. The internal inconsistencies in
2 Mr. Souza's function report was a germane reason to discount it.

3 Third, the ALJ noted Mr. Souza appeared to base his opinions on Plaintiff's
4 subjective complaints. Tr. 27. An ALJ may reject lay testimony that described
5 the same limitations as a claimant's own testimony, where the ALJ gave clear and
6 convincing reasons for rejecting the claimant's testimony. *Molina*, 674 F.3d at
7 1122. Because, as discussed *infra*, the ALJ properly discredited Plaintiff's
8 subjective testimony, this too was a germane reason to discredit Mr. Souza's
9 opinion.

10 2. Ms. Southard

11 Next, Plaintiff faults the ALJ for rejecting the opinion of Sharon Southard, a
12 friend of Plaintiff's who also submitted a functional report concerning Plaintiff's
13 limitations.² Tr. 241. Ms. Southard noted Plaintiff had trouble going up and down
14 stairs, she could not run, and she had problems using her hands. *Id.* Further, she
15 opined that Plaintiff could not bend over, could not lift anything, was very weak,

16
17 ² The ALJ also rejected the opinion of Melody Buris, Tr. 240, another friend of
18 Plaintiff. Tr. 27. However, Plaintiff does not assign error with respect to this
19 opinion. ECF No. 14 at 5 (Plaintiff's brief notes only that "Ms. Burres lists that
20 Plaintiff has problems, but doesn't describe what she herself witnesses.").

1 and could “hardly get around.” *Id.* The ALJ rejected this opinion because Ms.
2 Southard was not an acceptable medical source, her opinions were not supported
3 by the medical evidence or by the record as a whole, and they were contradicted by
4 Plaintiff’s failure to seek and comply with treatment. Tr. 27-28.

5 First, the ALJ rejected Ms. Southard’s opinion because she was not an
6 acceptable medical source. This was error. As noted, the ALJ is required to
7 consider, and must give germane reasons for discounting, lay witness testimony
8 such as Ms. Southard’s. *See Molina*, 674 F.3d at 1114. However, because the ALJ
9 gave other germane reasons supported by substantial evidence for discounting Ms.
10 Southard’s opinion, this error is harmless. *See Stout*, 454 F.3d at 1054-55 (An
11 ALJ’s error is harmless if “the ALJ’s error did not materially impact his decision”).

12 Second, the ALJ found that Ms. Southard’s opinions were not supported by
13 the medical evidence. An ALJ may reject lay witness testimony that is
14 inconsistent with the medical evidence. *Bayliss*, 427 F.3d at 1218 (citation
15 omitted). For example, the ALJ noted that in July 2012, examining physician Dr.
16 Weis opined that Plaintiff had no fine motor limitations, Tr. 26 (citing Tr. 311); in
17 addition, Dr. Weis opined that Plaintiff could frequently handle, finger, and feel.
18 Tr. 26 (citing Tr. 311-12). This was inconsistent with Ms. Southard’s opinion that
19 Plaintiff had problems using her hands. Tr. 241. Furthermore, Dr. Weis opined
20 that Plaintiff has no sitting, standing, or walking limitations, Tr. 312, which is

1 inconsistent with Ms. Southard's opinion that Plaintiff "can hardly get around ."
2 Tr. 241.

3 Third, the ALJ found that Ms. Southard's opinions were inconsistent with
4 Plaintiff's lack of treatment and lack of compliance with treatment. Tr. 26, 28.
5 For example, Ms. Southard opined that Plaintiff "could hardly get around." Tr.
6 241. This severe limitation was inconsistent with Plaintiff's lack of treatment and
7 lack of compliance with treatment. Tr. 26, 28; *see, e.g.*, Tr. 295 (In August 2011,
8 Dr. Rinella noted that Plaintiff had "not demonstrated a strong trend toward
9 compliance"); Tr. 304 (In June 2012, Dr. Ragonesi noted that Plaintiff has a
10 history of not following up for ongoing care). As the ALJ inferred, presumably a
11 person who "could hardly get around," as Ms. Southard opined, would be
12 motivated to comply and follow up with ongoing medical care.

13 Next, the ALJ noted Ms. Southard's opinions were inconsistent with the
14 record as a whole. Tr. 28 (citing 241). The ALJ is not required to credit opinions
15 that are unsupported by the record as a whole. *Batson v. Comm'r of Soc. Sec.*
16 *Admin.*, 359 F.3d 1190, 1195 (9th Cir. 2004). For example, the ALJ found that the
17 record indicated Plaintiff played pool and went rock hunting, activities that
18 indicate Plaintiff is "far more agile" than Ms. Southard opined. Tr. 28; *see, e.g.*,
19 Tr. 210 (Mr. Souza stated that Plaintiff goes rock hunting once every six months or
20 so); Tr. 304 (in June 2012, Plaintiff told examining psychologist Amanda

1 Ragonesi, Psy.D., that she enjoyed playing pool with friends several times a
2 month; she also enjoyed playing video games, reading, and walking daily). The
3 ALJ provided several germane reasons for rejecting Ms. Southard's opinion.

4 **B. Adverse Credibility Finding**

5 Next, Plaintiff faults the ALJ for failing to provide clear and convincing
6 reasons for discrediting her symptom claims. ECF No. 14 at 8-11.

7 An ALJ engages in a two-step analysis to determine whether a claimant's
8 testimony regarding subjective pain or symptoms is credible. "First, the ALJ must
9 determine whether there is objective medical evidence of an underlying
10 impairment which could reasonably be expected to produce the pain or other
11 symptoms alleged." *Molina*, 674 F.3d at 1112 (internal quotation marks omitted).
12 "The claimant is not required to show that her impairment could reasonably be
13 expected to cause the severity of the symptom she has alleged; she need only show
14 that it could reasonably have caused some degree of the symptom." *Vasquez v.*
15 *Astrue*, 572 F.3d 586, 591 (9th Cir. 2009) (internal quotation marks omitted).

16 Second, "[i]f the claimant meets the first test and there is no evidence of
17 malingering, the ALJ can only reject the claimant's testimony about the severity of
18 the symptoms if [the ALJ] gives 'specific, clear and convincing reasons' for the
19 rejection." *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (internal
20 citations and quotations omitted). "General findings are insufficient; rather, the

1 ALJ must identify what testimony is not credible and what evidence undermines
2 the claimant's complaints." *Id.* (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th
3 Cir. 1995)); *Thomas v. Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) ("[T]he ALJ
4 must make a credibility determination with findings sufficiently specific to permit
5 the court to conclude that the ALJ did not arbitrarily discredit claimant's
6 testimony."). "The clear and convincing [evidence] standard is the most
7 demanding required in Social Security cases." *Garrison v. Colvin*, 759 F.3d 995,
8 1015 (9th Cir. 2014) (quoting *Moore v. Comm'r of Soc. Sec. Admin.*, 278 F.3d 920,
9 924 (9th Cir. 2002)).

10 In making an adverse credibility determination, the ALJ may consider, *inter*
11 *alia*, (1) the claimant's reputation for truthfulness; (2) inconsistencies in the
12 claimant's testimony or between her testimony and her conduct; (3) the claimant's
13 daily living activities; (4) the claimant's work record; and (5) testimony from
14 physicians or third parties concerning the nature, severity, and effect of the
15 claimant's condition. *Thomas*, 278 F.3d at 958-59.

16 This Court finds the ALJ provided specific, clear, and convincing reasons
17 for finding that Plaintiff's statements concerning the intensity, persistence, and
18 limiting effects of her symptoms "are not entirely credible." Tr. 24.

1 *1. Daily Activities*

2 The ALJ found that the level of physical limitation Plaintiff alleged was
3 inconsistent with her reported daily activities. Tr. 29. A claimant's reported daily
4 activities can form the basis for an adverse credibility determination if they consist
5 of activities that contradict the claimant's "other testimony" or if those activities
6 are transferable to a work setting. *Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir.
7 2007); *see also Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989) (daily activities
8 may be grounds for an adverse credibility finding "if a claimant is able to spend a
9 substantial part of his day engaged in pursuits involving the performance of
10 physical functions that are transferable to a work setting."). Here, the ALJ found,
11 for example, that in June 2012, Plaintiff reported that she played pool and took
12 daily walks. Tr. 29 (citing Tr. 304). Plaintiff reported that she was able to prepare
13 meals, wash dishes, vacuum, and drive a car; and she occasionally went "rock
14 hunting." Tr. 29 (citing Tr. 200-02). Plaintiff also reported that she shopped for
15 food once a week for 30 minutes, was able to walk a quarter of a mile before
16 needing to rest, and had no problems with personal care. Tr. 29 (citing Tr. 199,
17 201-03). The ALJ found that Plaintiff's daily activities were inconsistent with her
18 allegations that she is unable to sit, stand or walk for long periods of time. Tr. 23
19 (citing Tr. 47-50). The ALJ reasonably concluded that Plaintiff's daily activities

1 were inconsistent with her symptom claims. This was a clear and convincing
2 reason to discredit Plaintiff's symptom claims.

3 2. *Work History*

4 Next, the ALJ found that Plaintiff's work history reflected unfavorably on
5 her motivation for work. Tr. 29. Poor work history can provide a permissible
6 reason to cast doubt on a claimant's purported reason for unemployment. *See*
7 *Thomas*, 278 F.3d at 959. The ALJ concluded that the record showed that Plaintiff
8 has never performed substantial gainful activity, and has had no earnings since
9 1985. Tr. 29 (citing Tr. 182). Yet, Plaintiff alleges that her disability began in
10 2006. Tr. 30. The ALJ opined that Plaintiff's work history suggests "she has very
11 poor motivation for work, and may be applying for disability to avoid working."
12 Tr. 29. Plaintiff contends because she was home raising children, the ALJ should
13 not have relied on this reason. However, at the hearing, Plaintiff testified that her
14 youngest child was 23 years old. Tr. 59. The ALJ's reliance on Plaintiff's poor
15 work history was a clear and convincing reason to discredit her symptom claims.

16 3. *Lack of Compliance with Treatment*

17 The ALJ found Plaintiff's lack of compliance with medical treatment, and
18 lack of treatment, diminished her credibility. Tr. 29-30. When weighing
19 credibility, the ALJ may properly consider unexplained or inadequately explained
20 failure to seek treatment or to follow a prescribed course of treatment. *Tommasetti*

1 *v. Astrue*, 533 F.3d 1035, 1039 (9th Cir. 2008). The ALJ found, for example, that
2 despite several recommendations that Plaintiff follow up with alcohol and
3 marijuana treatment, Plaintiff reported that she was not interested in treatment for
4 substance dependency.³ Tr. 29-30 (citing Tr. 295) (Plaintiff told Dr. Rinella that
5 she would probably not be interested treatment for alcoholism; Dr. Rinella opined
6 that Plaintiff's elevated blood pressure and anxious fidgeting "may be due to
7 alcohol withdrawal."). Similarly, the ALJ observed that Plaintiff reported she
8 obtained Medicaid in 2009, but did not seek any medical treatment or take any
9 medications for her impairments for over a year. Tr. 30 (citing Tr. 301, 303-04)
10 (Plaintiff applied for Medicaid but sought no medical care). Likewise, in August

11 _____
12 ³ Plaintiff appears to contend that the ALJ discredited her testimony, and perhaps
13 that of the lay witnesses, based in part on Plaintiff's substance use. *See* ECF No.
14 14 at 5 (alleging the ALJ discredited the lay testimony based on his negative
15 assessment of Plaintiff's credibility and on Plaintiff's use of alcohol and
16 marijuana). Plaintiff misreads the record. The ALJ cited the substance use in the
17 context of identifying instances where Plaintiff failed to seek treatment when
18 recommended by treatment providers; the ALJ did not simply discredit her due to
19 the fact of substance use. This was simply one of several instances where a
20 treatment provider recommended treatment, which Plaintiff refused.

2011, Dr. Rinella opined that physical therapy would probably be beneficial, but Plaintiff “has not demonstrated a strong trend toward compliance.” Tr. 295. Moreover, the ALJ found that Plaintiff failed to return for treatment after having completed DSHS evaluations, and failed to fill a prescription pain medication, Naproxen, for over a year, prior to April 4, 2012. Tr. 30 (citing Tr. 298) (provider in April 2012 noted Plaintiff filled Naproxen once in the past year). Plaintiff’s failure to seek treatment and improvement for her impairments was a clear and convincing reason to discredit her testimony.

4. Disability Shopping

Fourth, the ALJ found the record indicates Plaintiff may be disability shopping. Tr. 30. The ALJ certainly may consider motivation and the issue of secondary gain in rejecting symptom testimony. *See Matney ex rel. Matney v. Sullivan*, 981 F.2d 1016, 1020 (9th Cir. 1992) (Plaintiff’s “well documented motivation to obtain social security benefits” supported the ALJ’s credibility assessment.). The ALJ noted, for example, that in March 2009, Plaintiff reported to a treatment provider that her goal was to obtain a letter from a physician for SSI stating that she could not work. Tr. 30 (citing Tr. 379). The clinic note the ALJ relied on stated Plaintiff’s “Goal is to obtain a GAU/SSI note from a physician [sic] determine reason for inability to work.” Tr. 379. The note further indicated that Plaintiff had never been seen at this clinic before, and had not worked for 19

1 years. *Id.* Similarly, in September 2013, Plaintiff asked another physician, Dr.
2 Witherrite, to draft a letter stating that Plaintiff was disabled. Tr. 30 (citing Tr.
3 412). This physician refused because Plaintiff, again, was a new patient, and the
4 physician had no information about her medical impairments. Tr. 412.

5 Last, the ALJ noted that Plaintiff's alleged onset of disability date is
6 inconsistent with the dates she filed her applications. Tr. 30. Although Plaintiff
7 alleged onset beginning in September 2006, Tr. 169, she did not file her earlier
8 application until 2011, approximately five years after alleged onset. Tr. 30. The
9 ALJ found "[t]his calls into question the integrity of her alleged onset date and her
10 overall credibility. Tr. 30.⁴ The ALJ reasonably interpreted the evidence as
11 demonstrating that Plaintiff was disability shopping, which was a clear and a
12 convincing reason to reject her symptom claims.

13 Plaintiff faults the ALJ for impermissibly using personal observation when
14 he assessed Plaintiff's credibility. ECF No. 14 at 11. However, while an ALJ's
15 observations may not form the *sole* basis for discrediting a person's testimony,

16 _____
17 ⁴ Even assuming that the ALJ did err in the reasoning related to the application
18 date, any error is harmless because the ALJ's ultimate credibility finding is
19 adequately supported by substantial evidence. *See Carmickle v. Comm'r*, 533 F.3d
20 1155, 1162-1163 (9th Cir. 2008).

1 S.S.R. 96-7p at 8, here, as indicated, the ALJ relied on more than his personal
2 observation.⁵ In sum, despite Plaintiff's arguments to the contrary, the ALJ
3 provided specific, clear, and convincing reasons for rejecting Plaintiff's testimony.
4 *See Ghanim*, 763 F.3d at 1163.

5 **C. RFC Assessment**

6 Last, Plaintiff faults the ALJ for assessing an RFC that failed to include all
7 of Plaintiff's impairments and limitations. ECF No. 14 at 12. Specifically,
8 Plaintiff contends that the RFC was improper because it does not include
9 limitations assessed by the lay witnesses. *Id.* The Court has previously considered
10 the ALJ's assessment of the lay witness testimony and found no error. An ALJ is
11 only required to present all limitations and restrictions supported by the record in
12 the RFC and to a vocational expert. *See Burch v. Barnhart*, 400 F.2d 676, 684 (9th
13 Cir. 2005) (citing *Magallanes v. Bowen*, 881 F.2d 747, 756 99th Cir. 1989). This
14 Court finds the assessed RFC was free of error because it included all of Plaintiff's
15 limitations supported by the record.

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19 ⁵ The ALJ observed that Plaintiff twice lifted her right arm over her head while
20 trying to demonstrate that she was unable to do so. Tr. 24.

1 **CONCLUSION**

2 After review, the Court finds that the ALJ's decision is supported by
3 substantial evidence and free of harmful legal error.

4 **IT IS ORDERED:**

5 1. Plaintiff's motion for summary judgment (ECF No. 14) is **DENIED**.

6 2. Defendant's motion for summary judgment (ECF No. 15) is **GRANTED**.

7 The District Court Executive is directed to file this Order, enter **Judgment**
8 **for Defendant**, provide copies to counsel, and **CLOSE** the file.

9 DATED this 29th day of September, 2016.

10 S/ Mary K. Dimke

11 MARY K. DIMKE

12 UNITED STATES MAGISTRATE JUDGE
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